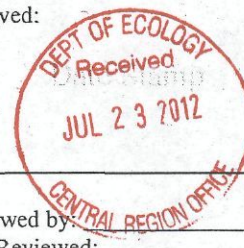




KITTITAS COUNTY  
WATER CONSERVANCY BOARD  
Application for Change/Transfer  
Record of Decision

For Ecology Use Only

Received:



Reviewed by: \_\_\_\_\_

Date Reviewed: \_\_\_\_\_

Applicant: Autumn Mtn Development Inc.

Application Number: KITT - 11- 12

This record of decision was made by a majority of the board at an open public meeting of the Kittitas County Water Conservancy Board held on July 18, 2012. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

**X Approval:** The Kittitas County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on July 18, 2012 and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:

\_\_\_\_\_  
Gregg Hall, Chair  
Kittitas County Water Conservancy Board

Date: 7/18/12  
Approve ☒  
Deny ☐  
Abstain ☐  
Recuse ☐  
Other ☐

\_\_\_\_\_  
Lenny Morrison, Member  
Kittitas County Water Conservancy Board

Date: 7 18 2012  
Approve ☒  
Deny ☐  
Abstain ☐  
Recuse ☐  
Other ☐

\_\_\_\_\_  
Chad Bala, Member  
Kittitas County Water Conservancy Board

Date: 7/18/12  
Approve ☒  
Deny ☐  
Abstain ☐  
Other ☐

Mailed with all related documents to the Dept of Ecology (regional office name) Regional Office, and other interested parties on (date mailed).

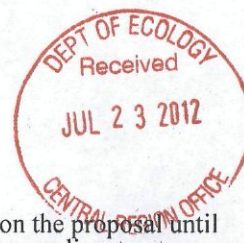
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(Board Name)  
**WATER CONSERVANCY BOARD**  
*Application for Change/Transfer*  
OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF  
THE STATE OF WASHINGTON



**Report of Examination**

**NOTE TO APPLICANT:** Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

**NOTE TO AUTHOR:** Read the instructions for completing a water conservancy board report of examination. Use the F11 key to move through the form.

☒ Surface Water ☐ Ground Water

DATE APPLICATION RECEIVED 11/15/2011	WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.)00984	WATER RIGHT PRIORITY DATE October 29, 1884	BOARD-ASSIGNED CHANGE APPLICATION NUMBER KITT-11-12
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NAME Autumn Mountain Dev Inc.			
ADDRESS (STREET) 921 Hanson Road	(CITY) Ellensburg	(STATE) WA	(ZIP CODE) 98926

**Changes Proposed:** ☐ Change purpose ☐ Add purpose ☐ Add irrigated acres Change point of diversion/withdrawal  
☒ Add point of diversion/withdrawal ☐ Change place of use ☐ Other (Temporary, Trust, Interties, etc.)

**SEPA**

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

**BACKGROUND AND DECISION SUMMARY**

**Existing Right (Tentative Determination)**

MAXIMUM CUB FT/ SECOND .20 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 50	TYPE OF USE, PERIOD OF USE Irrigation of 10 acres and stock water, April 1 through October 31				
SOURCE Naneum Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO. 952280	¼ NE	¼ SW	SECTION 19	TOWNSHIP N. 17N	RANGE 19 EWM	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED 10 acres in North 1000 feet of portion of NE/SW Section 19, 17N, Range 19EWM West of I-82							
PARCEL NO. 952280	¼ NE	¼ SW	SECTION 19	TOWNSHIP N. 17N	RANGE, 19EWM		

**Proposed Use**

MAXIMUM CUB FT/ SECOND .20cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 50	TYPE OF USE, PERIOD OF USE Irrigation of 10 acres and stock water, April 1 through October 31				
SOURCE Wilson Creek – Naneum Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River				
AT A POINT LOCATED: PARCEL NO. 952280	¼ NE	¼ SW	SECTION 19	TOWNSHIP N. 17N	RANGE 19EWM	WRIA	COUNTY. Kittitas
DESCRIPTION OF NEW POINT OF DIVERSION The proposed new added point of diversion is located approximately 1140 feet South and 350 feet East of the Northwest corner of the Northeast Quarter of the Southwest Quarter of Section 19, Township 17 North, Range 19. E.W.M. Attached hereto and marked Exhibit B is the Hydraulic Permit Log Number 00-E2068-01, permitting the installation of said diversion by the Department of Fish and Wildlife, and attached hereto and marked Exhibit C is a copy of the Wright/Autumn Mountain Dev. Survey with the irrigated property being located within lot 11F.							
PARCEL NO. 952280	¼ NE	¼ SW	SECTION 19	TOWNSHIP N. 17N	RANGE, 19EWM		



# Board's Decision on the Application

MAXIMUM CUB FT/ SECOND .20 cfs	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 50	TYPE OF USE, PERIOD OF USE April 1 through October 31				
SOURCE Wilson Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River at a point located (Approximately 1140 feet South along West line of NE ¼ of SE ¼ and 350 feet East from that West line on Wilson Creek all within NE ¼ of SW ¼ of Section 19, Township 17N, Range 19, EWM, West of Interstate 82)				
AT A POINT LOCATED: PARCEL NO. 952280	¼ NE	¼ SW	SECTION 19	TOWNSHIP N. 17N	RANGE 19EWM	WRIA	COUNTY. Kittitas
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD 10 acres in North 1000 feet of a portion of NE/SW Section 19, 17N, 19 EWM, West of I-82.							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	RANGE,	

## DESCRIPTION OF PROPOSED WORKS

A concrete pump pad and irrigation pump with Intek screen to protect entrapment of fish and to designed to withdraw .20 cfs located on the west bank of Wilson Creek behind the residence located at 371 Herron Farm Lane. The project was completed pursuant to that Hydraulic project Approval #00-E2068-01 issued February 26, 2000, a copy of which is attached hereto and marked Exhibit A.

## DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Completed	COMPLETE PROJECT BY THIS DATE: Completed	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: Completed April 2000 – in use since
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## REPORT

NOTE TO AUTHOR: This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.

## BACKGROUND [See WAC 173-153-130(6)(a)]

On November 15, 2011 David Wright as Principal Officer of Autumn Mountain Dev Inc filed an application for change of point of diversion of a withdrawal authorized under Court Claim No. 00984 as the right was confirmed in that certain Memorandum Opinion and Order re: Exceptions to Supplement Report of Referee Subbasin 9, page 56 thereof, signed by Commissioner Sidney Autumn on May 20, 2004. A copy of the excerpts of said report are attached hereto and marked Exhibit B.

The above Application was accepted at an open public meeting on November 15, 2011 and the Board assigned Application No. KITT-11-12.

### Attributes of the water right as currently documented

Name on certificate, claim, permit: David and Louise Wright, Husband and Wife

Water right document number: Court Claim No. 00984

As modified by certificate of change number:

Priority date, first use: October 29, 1884

Water quantities: Qi: .20 cfs    Qa: 50 acre ft./ year

Source: Naneum Creek

Point of diversion/withdrawal: NE ¼ of the SW ¼ Section 19, Township 17N, Range 19 EWM, Parcel 952280 located on Naneum Creek immediately West of Interstate 82 and the most NE corner of the described place of use.

Approximately 10 feet South and 50 feet West of the center of Section 19 in the NE ¼ SW ¼ of Section 19.

Purpose of use: Irrigation of 10 acres and stock watering

Period of use: April 1 through October 31

Place of use: 10 acres of the North 1000 feet of that portion of the NE ¼ SW ¼ of Section 19, Township 17N, Range 19 E.W.M, lying west of Interstate 82.

Existing provisions: N/A



*Tentative determination of the water right*

The tentative determination is provided on the front page of this report.

The Court's Memorandum Opinion signed by Commissioner Sidney Autumn on May 20, 2004, and is contained in the Conditional Final Order signed by the Court on April 17, 2006.

*History of water use*

The Wright property now owned by Autumn Mountain Dev Inc. was documented through a water right claim filed by Clifford Bird under Water Right Claim #033787 which documents historical use back to the priority date of October 29, 1884 and which use has continued through the present time. The historical diversion documented by Mr. Bird on Naneum Creek was destroyed by flooding and has since been replaced by a pump in Wilson Creek supplying water to the area previously irrigated from the diversion on Naneum Creek as recognized by the Court in its Memorandum Opinion signed by Commissioner Autumn on May 20, 2004. The State of Washington Department of Fish and Wildlife would not allow claimant to reinstall the diversion in Naneum Creek and instead directed the claimant to a location in Wilson Creek located within the same quarter section and proceeded to advise and cooperate with the installation of an additional diversion in Wilson Creek using water from the same Subbasin and water source Wilson/Naneum. Property has been regularly irrigated consistently with water from the Wilson/Naneum water shed.

*Previous changes*

No previous changes

*SEPA*

The board has reviewed the proposed project in its entirety. The Board reviewed the proposed project in its entirety. The project is exempt from SEPA because it is only changing the point of diversion and is under the CFS Threshold. The discussion of the historic right is reflected in the Memorandum Opinion regarding Subbasin 9 exceptions applicable to this water right under 00984 and the provisions within the Memorandum Opinion are reflected herein as though fully set forth.

*Other*

**The information or conclusions in this section were authored and/or developed by <Name of person(s)>.**

**COMMENT AND PROTESTS** [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the Daily Record on November 30 and December 7, 2011. An applicant has filed a copy of the Affidavit of Publication which includes a full copy of the Notice of application to Change Point of Diversion under Court Claim No. 00984. The application received 2 protests, one of which was received after the 30 day period as set forth in the publication, which period expired January 6, 2012. However, the Board entertained and reviewed the written and oral objections received from John H. Ludwick and Jeff Brunson on behalf of the Bull Canal Company and partner in Fenceline LLC with a Court No. 00529. Date protests were received was approximately January 4 and January 17, 2012. These were recognized by the Board as protests.

There was one protest received during the 30 day protest period. In addition, two oral and written comments were received at an open public meeting of the board or other means as designated by the board.



Date: January 4 and 17

This was recognized by the board as a ☒ Protest ☐ Comment

Name/address of protestor/commenter: Jeff Brunson on behalf of Bull Canal Company and Fenceline LLC

John Ludwick on behalf of himself, Claim No. 00904

Issue: both objectors complained of relinquishment and negative affect on existing water right users.

Board's analysis: The Board did not believe that the addition of a new point of diversion would have a negative affect on either of the protestors. The priority date of Mr. Ludwick is prior to that of the claimant and therefore if a water shortage existed the withdrawal of the Ludwick rights would be protected since his diversion is prior in time to that of the claimant. In regards to protestor Brunson and Bull Canal Company that right is Junior to that of Autumn Mountain Dev Inc. The withdrawals of Bull Canal Company is primarily taken principally from the Yakima River through the Bull Canal; however, right does also exist to receive the water from Wilson Creek as described below. The Fenceline LLC withdrawal is from Lyle Creek and from Wilson Creek

The Board also finds that based on the testimony of David Wright on behalf of the claimant and John Eaton, a neighbor to the property being irrigated, that the property has been irrigated consistently and the water right has not been relinquished.

In as much as the finding of the Court in May of 2004 was that the right existed at that time and based on the testimony of Mr. Eaton who has determined that the right has not been relinquished.

The claimant has submitted copies of the protestors/commentators water rights which show that the Bull Canal Company water rights are junior to those of claimant; in addition the Bull Canal Company water right is actually sourced directly from the Yakima River. Wilson Creek is used to transport the water to the service area. Copies of the Bull Canal Company's water right claims and the comments of the referee as contained in the Supplemental Report of Referee show that the point of diversion recognized in Wilson Creek for the Bull Canal Company is part of the right recognized for Bull Canal with water from the Yakima River water and Wilson Creek with a priority of June 30, 1885. Withdrawals from Wilson will reduce directly the Yakima River right. Bull Canal can choose to use either source; but principally and historically uses Yakima River water.

Protestor Jeff Brunson's water right from Subbasin 9 with a priority date earlier than that of the claimant is actually for an unnamed stream originating near I-90. Even if it were Wilson Creek water it still has an earlier priority date, is located above and north of the point of diversion and therefore the point of diversion below that of Brunson's even if from Wilson Creek does not threaten or impair the Brunson water right which would always have priority and is above that of the claimant.

The water right claimed for Fenceline LLC is from both Lyle Creek and Wilson Creek and is also located above the point of diversion of claimant's proposed change to Wilson Creek and does not pose a threat to Fenceline LLC's water right which is also diverted to the north and upstream of claimant's proposed place of diversion.

The water right claim of Ludwick in Wilson Creek under claim no. 00904 for the irrigation of twenty four and a half acres is also located north of and is five months prior to the water right claim of claimant and therefore no risk of loss of water or interference with withdrawal of a prior water right is at risk in regards to the Ludwick claim since it is prior and a diversion claim and is north of that of the claimant. Based on the evidence submitted the Board finds that there would be no impairment or negative effect on any existing water right users.

The testimony before the Board as well as the photographic exhibits show that the property has been regularly irrigated at least once for every five years. In addition, claimant raises the position that the State is equitably estopped from claiming a relinquishment of water rights; 1. The State of Washington prevented reestablishment of the historical Naneum diversion and encouraged, cooperated and permitted a relocation of the diversion to Wilson Creek; 2. Wilson and Naneum Creek are combined with a single flow at one point to the extreme north of the Valley, with a common water shed and therefore the waters of Wilson and Naneum are in essence one body of water; 3. the property has been regularly irrigated at least once every five years and water applied to it as shown by the exhibits submitted by claimants.

The Board finds that there would be no negative impact on either Bull Canal Company, Fenceline LLC, Brunson or Ludwick as all of those diversions are north of the proposed diversion point of claimant and several of the claims are of an earlier priority date. Granting or denying of this petition would have no effect whatsoever on the availability of water to claimants.

The Board also finds that based on the testimony of David Wright and John Eaton, the neighbor to the south, that the property has been regularly irrigated consistently and that there has been no relinquishment of the water right and all of the water has been beneficially applied to the property at least once every five years in the past. Testimony of Mr. Wright indicated that he complied with the request of Fish and Wildlife and other State agencies in regards to the relocation of the point of diversion to Wilson Creek and he relied upon the assistance and representations of the State of Washington through those agents and reestablishment of the point of diversion on Wilson rather than Naneum Creek.

The Court in the Acquavella case in the finding in May of 2004 that the water right was valid and that it existed as of that time and based on the testimony of Mr. Eaton and Mr. Wright finds that the water right has not been relinquished. The application of waters to the property has been regular and consistent.

Exhibit F is attached showing the relative locations of the diversions addressed herein

**NOTE to author:** Repeat this table as necessary to describe each protest or comment

Other

<Provide any other pertinent information relative to the comments and protests received>



**The information or conclusions in this section were authored and/or developed by <Name of person(s)>.**

## INVESTIGATION [See WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by Chad on January 13, 2012 <date of field exam>, which inspection showed the existing pump station on the west bank of Wilson Creek and a large pipeline leading northeast to the 10 acres subject to the application. Inspection showed that the irrigation lines and water supplied to the property existed and the pump station was well established with breakers, a fish screen, etc. Examination of aerial photographs from the applicant from Google Earth showing the property during various phases of the past 12 years established that the property was an had been irrigated consistent with the testimony received.

### *Proposed project plans and specifications*

<Describe proposed use of water to include # of connections, method of irrigation, type of crop, commercial use, etc.>, Also describe any issues related to development, such as the proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending change applications & instream flows established under state law>

System exists and irrigates the place of use (10 acres) used for pasture and hay.

### *Other water rights appurtenant to the property (if applicable)*

None.

### *Public Interest (groundwater only)*

The proposed transfer is subject to RCW 90.44.100 and therefore, cannot be detrimental to the public interest, including impacts on any watershed planning activities. <Provide an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest is not considered if the proposed water right is authorized under RCW 90.03.380 exclusively>

Not Applicable.

### *Tentative Determination*

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment.

### *Geologic, Hydrogeologic, or other scientific investigations (if applicable)*

None.

### *Other*

Referencing Exhibit D attached, the Board finds that Wilson Creek is a tributary of Naneum Creek and therefore can be considered to share the same recharge area/water shed; and they share a common flow ravine for about one mile after Wilson Creek feeds into Naneum Creek and again at the bottom of the system. The two creeks were adjudicated in one Subbasin and in regards to regulating water rights on either of the creeks, the Department of Ecology considers the flow of both creeks; thus, they are not considered entirely independent of each other for the purposes of water right administration and are considered one system in that regard. The Board believes that it is best to consider them as a same source which would allow a movement of a pointed diversion from Naneum to Wilson Creek as the applicant is requested. The Board has reviewed the take out points of the protestors which are all north of the proposed new take out point on Wilson Creek by applicant and therefore the Board concludes that the addition of the point of diversion would not affect senior water rights or those of the protestors. The Board is aware of a similar relocation of point of diversion from one stream to another within the same Subbasin as in the case of the application of Laval Inc wherein the Board approved the change of a diversion from Swauk Creek to Williams Creek, where, such as here, both streams were present within the same ownership of properties and allowed the relocation of the diversion from Swauk Creek to Williams Creek. Applicant modified his request from a change in point of diversion to a request to add a point of diversion and is not relinquishing rights to the historic point of diversion.

Exhibit E attached hereto is the Court Claim No. 00984. Exhibit F is a copy of water rights of protestors. Exhibit G is a color photo showing the locations of all diversions referenced herein.

**The information or conclusions in this section were authored and/or developed by Applicant David Wright.**

## CONCLUSIONS [See WAC 173-153-130(6)(d)]

### *Tentative determination (validity and extent of the right)*



The water right has been used to the extent of .20 cfs and 50 acre feet per year as indicated by testimony, aerial photos and site visit.

*Relinquishment or abandonment concerns*

The water right has not been relinquished or abandoned.

*Hydraulic analysis*

*Consideration of comments and protests*

The Board heard and considered the comments and protests by Mr. Ludwick and Mr. Brunson but find that the proposed change of the point of diversion will not negatively impact the water rights of the protestors or any other senior water rights

*Impairment*

The Board does not find that there will be any impairment to existing water rights. In addition to the other reasons set forth this particular area of Kittitas Valley has not experienced a water shortage or lack of flow historically in that it is in the area of convergence of all of the Wilson and Naneum Creeks and their tributaries and is located very close to the confluence with these Creeks and the Yakima River as it exits Lower Kittitas Valley.

*Public Interest*

The project is not detrimental to public interest.

*Other*

The board also considered the previous provisions associated with the water right as identified in the background section of this report when making its decision. <Provide any other pertinent information relative to the board's conclusions>

**DECISION** [See WAC 173-153-130(6)(e)]

The Kittitas County Conservancy Board is in full agreement that the point of diversion and changes therefore are not and will not harm any other irrigator and is environmentally beneficial and should be approved.

**The information or conclusions in this section were authored and/or developed by Richard T. Cole, attorney for Applicant.**

**PROVISIONS** [See WAC 173-153-130(6)(f)]

*Conditions and limitations*

Autumn Mountain Dev.'s additional point of diversion on Wilson Creek shall be considered junior to all upstream water right users on Wilson Creek and is subject to the priority system during water short years.

*Mitigation (if applicable)*

None.

*Construction Schedule*

The actual new point of diversion exists at this time.

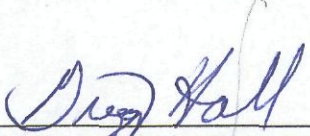
*Other*

**The information or conclusions in this section were authored and/or developed by <Name of person(s)>.**

The undersigned board commissioner certifies that he/she understands the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report's conclusions.

Signed at Ellensburg, Washington

This 18th day of July, 2012

  
\_\_\_\_\_  
Board Representative's Name, Board Representative  
Board Name Water Conservancy Board

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